

REMARKS

Summary

Claims 1-29 are pending in this application. Claims 1-29 have been cancelled and Claims 30-67 added. No new matter has been added.

Specification/ Rejection of Claims under 35 U.S.C. §112, second paragraph

The specification was objected to for “indefinite terms” in the specification. These terms include: may display, disposed proximately thereto, may be placed, disposed proximately, and approximate.

Applicant is unaware of any provision in the MPEP which permits the specification to be objected to for having indefinite terms such as those indicated by the Examiner. To the best of Applicant’s knowledge, any indefiniteness that may exist should be brought up in the context of a 35 U.S.C. §112, second paragraph rejection of the claims. The MPEP further states in 2173 that “... [the examiner] should allow claims which define the patentable subject matter with a *reasonable* degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.” Moreover, this determination must be made with reference to one of skill in the art rather than in a vacuum (see MPEP 2163 et seq.).

Specifically, the use of the term “may” at various places in the specification merely connotes various abilities of the arrangement. For example, paragraph [0016] states “the visual indicator corresponding to the data port may display information about the corresponding data port,” which denotes that the indicator has the ability to be activated under a particular set of desired circumstances (*e.g.* at a particular time, if a specific button or key is pressed) to provide certain information. There is nothing indefinite about such a statement. Similarly, other uses of the term “may” indicate individual configurations; one configuration may have one set of elements while another configuration may have another set of elements. In either case, the configuration has a definite set of elements.

Use of the term “proximately” (and “proximate”) is similarly definite. Paragraph [0016] provides one example of the use of the term “proximately,” stating that the revision systems comprises “...at least one visual indicator corresponding to and disposed proximately to at least

a plurality of the data ports.” Such a statement, which is similar to others in the specification using the term “proximately,” serves to locate the position of the visual indicator(s) relative to the data ports (e.g. such that the revisor can see the visual indicator(s) when altering a connection of one of the data ports).

Regarding the use of the term “approximate”, the sole use is in paragraph [0010], which states, “...if the two lights are in places where they cannot be seen from where the revisor is standing, the revisor must first find both lights, visually approximate the distance between them, and guess at the minimal length of cord needed to connect the corresponding ports.” In this sentence, approximate is used as a verb (i.e. describing what the revisor is doing), rather than an adjective (e.g. modifying a distance). This sentence, which is in the background, describes the manner in which patch cords in automatic revision systems were chosen previously.

Even though the claims have been cancelled, Applicant believes a few words about claim indefiniteness may be useful. The CAFC explained recently in Fisher-Price v. Graco (Fed. Cir. 2005) that a defect in a claim must be “severe” before it is indefinite. In Fisher-Price, the CAFC reversed the trial court’s holding of indefiniteness because the “patent [which dealt with a collapsible baby swing] is not complex; it is readily understood by both the expert and layperson [and] the words used in the limitation are simple, with well-known ordinary meanings [that] can be construed without great difficulty, even if, as Graco points out, it is not mentioned in the specification.” The CAFC reaffirmed Exxon Research and Eng’g Co. v. United States, 265 F.3d 1371, 1375 (Fed. Cir. 2001) in which they concluded:

[W]e have not held that a claim is indefinite merely because it poses a difficult issue of claim construction. We engage in claim construction every day, and cases frequently present close questions We have not insisted that claims be plain on their face in order to avoid condemnation for indefiniteness; rather, what we have asked is that the claims be amenable to construction, however difficult that task may be. If a claim is insolubly ambiguous, and no narrowing construction can properly be adopted, we have held the claim indefinite. If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.

To contrast this with a term that the CAFC actually indicated was indefinite, the same year as Fisher-Price, the CAPC decided Datamize v. Plumtree Software (Fed. Cir. 2005). In Datamize, which was directed to a software program that allows a person to author user

interfaces for electronic kiosks, the CAFC determined that the term “aesthetically pleasing” was indefinite holding, “[i]n the absence of a workable objective standard, ‘aesthetically pleasing’ does not just include a subjective element, it is completely dependent on a person’s subjective opinion.”

In the previous claims, the terms “proximate” and “proximately” are readily understood by one of skill in the art, are simple, and have well-known ordinary meanings that can be construed without great difficulty, like the terms at issue in Fisher-Price and Exxon. The location of elements as described in the claims are not merely subjective, as the term “aesthetically pleasing” in Datamize, but instead has an objective working standard which limits the scope of the claims such that one of skill in the art would understand their scope.

Claims 26-27 recited targeting at least one of a scan or analysis of scan results to obtain information regarding the status of the revision system. Both Claims 21 (on which Claim 26 depends) and 25 (on which Claim 27 depends) recite a scanner that is capable of polling at least some of the data ports for determining connective status information therefrom. As is clear from both the claim and paragraph [0035] (and as recognized by the Office Action on p. 8, line 6), polling is synonymous with scanning. In addition, being able to determine connective status information necessarily requires results to be attained by polling the data ports and these results analyzed. Thus, it is clear that the scanner polls (or scans) data ports, the data ports return (scan/poll) results, and these results are analyzed to determine the connective status information. Claims 26-27 recited limiting the scan itself and/or analysis of the results, thereby limiting the computational power used as well as the time delay between scans/pollings.

In addition, as several Office Actions have already issued without any of these issues being raised, Applicant respectfully requests withdrawal of the objection to the specification.

Rejection of Claims under 35 U.S.C. §102(e)/103(a)

Claims 1-4, 23, 25, and 29 were rejected under 35 U.S.C. §102(e) as being anticipated by Krupka (U.S. Patent 5,483,467), Claims 13-17, 21, and 26 were rejected under 35 U.S.C. §102(e) as being anticipated by Kahkoska (U.S. Patent 6,629,269), Claims 5-12 and 24 were rejected under 35 U.S.C. §103(a) as being obvious over Krupka in view of Smith (U.S. Patent 5,583,874), Claims 18-20, 22, and 28 were rejected as being obvious over Kahkoska in view of Krupka, and Claim 27 was rejected as being obvious over Krupka in view of Kahkoska.

Applicant traverses the rejections at least due to the same reasons as those previously presented. Also, the diode of Krupka, 1N4148, is NOT a visual indicator. Any reference will show that 1N4148 is merely a high speed switching device -- it does not emit light, nor is it an output device.

However, the rejections are moot in light of the cancellation of Claims 1-29. Claims 1-29 have not been cancelled due to the rejections.

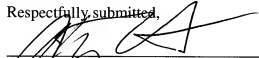
New Claims 30-67 are patentable over the cited references and are fully supported in the specification.

Conclusion

Applicant submits that the pending claims are in condition for allowance. If the Examiner believes that a telephone interview would be desirable to clear up further issues, he is encouraged to contact Applicant's attorney at the telephone number below. The Commissioner is authorized to charge any fees deemed necessary with the submission of this response, except the issue fee, to deposit account number 16-0228.

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Respectfully submitted,



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